

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ana Burcroff	Team: Team # 6	CCRB Case #: 200303092	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/23/2003 5:00 PM	Location of Incident: Prospect Park, Lower Meadow	Precinct: 78	18 Mo. SOL 10/23/2004	EO SOL 10/23/2004	
Date/Time CV Reported Wed, 04/23/2003 7:30 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 04/30/2003 3:18 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Walter Lopez	22648	904388	078 PCT
2. POF Yvonne Baez	28613	926538	078 PCT
3. LT John Vasek	00000	913271	078 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT John Vasek	Abuse: Lt. John Vasek stopped and questioned § 87(2)(b)	
B.LT John Vasek	Abuse: Lt. John Vasek supervised the stop and questioning of § 87(2)(b)	
C.LT John Vasek	Abuse: Lt. John Vasek supervised the stop and questioning of § 87(2)(b)	
D.POF Yvonne Baez	Force: PO Yvonne Baez pointed her gun at § 87(2)(b)	
E.POF Yvonne Baez	Abuse: PO Yvonne Baez threatened § 87(2)(b) with the use of force.	
F.POM Walter Lopez	Abuse: PO Walter Lopez threatened § 87(2)(b) with the use of force.	
§ 87(4-b), § 87(2)(g)		

### Synopsis

On April 23, 2003 at approximately 5:00PM, § 87(2)(b) and § 87(2)(b) were running track in Prospect Park. Three uniformed officers in a marked jeep stopped the boys and ordered § 87(2)(b) and § 87(2)(b) to get down. According to § 87(2)(b) and § 87(2)(b) officers threatened to shoot them if they did not get down fast enough. One of the officers, a female, pointed her gun at § 87(2)(b). The boys were instructed to stand up, and a senior officer informed them that they were stopped because the officers thought they were engaging in criminal activity. § 87(2)(b) father, § 87(2)(b) filed this complaint through the IAB complaint line on April 23, 2003.

Mediation was not offered to the boys because complaints involving force allegations (gun pointed) are not mediable. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

### Summary of Complaint

§ 87(2)(b) called the IAB command center at 7:30PM on April 23, 2003 to report this complaint on behalf of his son, § 87(2)(b) and his sons' teammates, § 87(2)(b) and § 87(2)(b).

§ 87(2)(b) was interviewed at his home, located at § 87(2)(b) in Brooklyn, on May 7, 2003 (Encl. 8.a-e). § 87(2)(b) is a § 87(2)(b)-year-old black male, and he is § 87(2)(b). § 87(2)(b) runs for an extracurricular track team named § 87(2)(b), and the team practices at Prospect Park in Brooklyn on Wednesday evenings.

§ 87(2)(b) stated that on the evening of Wednesday, April 23, 2003 he went to track practice at Prospect Park. At approximately 5:00PM, § 87(2)(b) began to run the loop with two teammates, § 87(2)(b) and § 87(2)(b). § 87(2)(b) also explained that he, § 87(2)(b) and § 87(2)(b) ran on the wood chip path that runs parallel to the asphalt "loop," and they started at Sunset Blvd. § 87(2)(b) and § 87(2)(b) were all wearing athletic gear and running shoes. § 87(2)(b) stated that he and § 87(2)(b) had wrist stopwatches, and § 87(2)(b) was carrying a hand-held stopwatch. As the boys approached the end of the loop by the Picnic House, they picked up the pace. § 87(2)(b) was running in front, § 87(2)(b) was behind and § 87(2)(b) was in last place. § 87(2)(b) noticed a marked police jeep drive by that he had seen previously when he started the run. The investigation revealed that the officers inside of the vehicle were Lt. John Vasek, PO Yvonne Baez and PO Walter Lopez. According to § 87(2)(b) Lt. Vasek was driving, PO Baez sat in the front passenger seat and PO Lopez was in the backseat.

The vehicle stopped ahead of § 87(2)(b) all three officers jumped out. § 87(2)(b) saw Lt. Vasek talking with § 87(2)(b) by the police jeep. § 87(2)(b) stood with his hands on the hood of the jeep. PO Baez ran towards § 87(2)(b) and when she was directly in front of him she drew her gun and told him to lie down on the ground with his hands behind his back. § 87(2)(b) complied. § 87(2)(b) stated that § 87(2)(b) was about ten to twenty meters in front of him, and he could not see § 87(2)(b) because § 87(2)(b) was behind him. § 87(2)(b) did not see PO Lopez draw his gun, but he heard PO Lopez say, "Get down before I shoot you," as he ran towards § 87(2)(b).

Lt. Vasek yelled to PO Baez and PO Lopez that everything was okay, and the boys were running for their track team. PO Baez holstered her gun and told § 87(2)(b) to get up. § 87(2)(b) PO Baez and PO Lopez joined Lt. Vasek and § 87(2)(b) by the police jeep. PO Baez and PO Lopez asked § 87(2)(b) and § 87(2)(b) for their names, and then asked § 87(2)(b) to show them what was in his hand. § 87(2)(b) showed the officers that he was holding a stopwatch. Lt. Vasek explained to the boys that he saw § 87(2)(b) and § 87(2)(b) running in front of § 87(2)(b) and he thought § 87(2)(b) and § 87(2)(b).

robbed § 87(2)(b) and § 87(2)(b) was chasing them. Lt. Vasek stated to the boys that he and his partners made a mistake, and he said that there had been numerous robberies in the area. Lt. Vasek told § 87(2)(b) and § 87(2)(b) that they were free to go. The three boys ran to where their coaches were, about 800 meters away, and told them about what happened.

§ 87(2)(b) clarified that he did not see any officer point a gun at § 87(2)(b) or § 87(2)(b) during this incident. § 87(2)(b) also stated that he and his friends were not frisked or searched. § 87(2)(b) stated that it was cold that day, about forty degrees, and he saw only two or three people flying kites in a nearby field.

§ 87(2)(b) was interviewed at § 87(2)(b) in Brooklyn, at the house of his track teammate, § 87(2)(b) on May 7, 2003 (Encl. 10.a-e). § 87(2)(b) is a § 87(2)(b)-year-old black male, and he attends § 87(2)(b). § 87(2)(b) also runs track for § 87(2)(b).

§ 87(2)(b) stated that at approximately 5:00PM on April 23, 2003, he was practicing with his track team in Prospect Park. § 87(2)(b) stated that he and two teammates, § 87(2)(b) and § 87(2)(b) were running the “loop” by themselves, as they normally do during track practice. § 87(2)(b) was wearing athletic clothes and carrying a stopwatch in his hand. Twenty minutes passed before he saw the police jeep again. § 87(2)(b) stated that he, § 87(2)(b) and § 87(2)(b) had just passed the library, and § 87(2)(b) and § 87(2)(b) were running in front of him. § 87(2)(b) increased his speed to try to catch up with § 87(2)(b) and § 87(2)(b) and then all three of them were stopped by the police officers in the jeep.

Three uniformed police officers exited the jeep, Lt. John Vasek, PO Yvonne Baez and PO Walter Lopez. According to § 87(2)(b) PO Lopez was driving, Lt. Vasek sat in the front passenger seat and PO Baez was in the rear. Lt. Vasek approached § 87(2)(b) who was closest to the vehicle; PO Baez approached § 87(2)(b) and PO Lopez came towards § 87(2)(b). § 87(2)(b) stated that as soon as PO Baez, the only female officer, exited the vehicle she said to § 87(2)(b) “Get on the floor or I’ll shoot,” then drew her gun and pointed it at § 87(2)(b). § 87(2)(b) stated that PO Baez was three or four meters away from § 87(2)(b) at the time. As PO Lopez approached § 87(2)(b) he also stated, “Get on the floor or I’ll shoot,” but he did not draw his gun. § 87(2)(b) stated that PO Baez was the only officer who drew a gun during this incident.

PO Lopez instructed § 87(2)(b) to get on the ground with his hands behind his head. § 87(2)(b) immediately complied. § 87(2)(b) said that he did not hear PO Baez give § 87(2)(b) any verbal instruction, but stated that he saw § 87(2)(b) lying face down on the ground with his hands behind his head, and PO Baez was pointing her gun at § 87(2)(b) head. § 87(2)(b) stated that § 87(2)(b) remained standing as he spoke with Lt. Vasek on the asphalt, near the police jeep. § 87(2)(b) did not believe that § 87(2)(b) saw PO Baez draw her gun, because PO Baez’s back was to § 87(2)(b). § 87(2)(b) stated that while he was on the ground, § 87(2)(b) and § 87(2)(b) were both about twelve meters away from him, and the orientation of all three formed a triangle.

While § 87(2)(b) was on the ground, PO Lopez asked him what he was holding in his hand and § 87(2)(b) produced his stopwatch. § 87(2)(b) informed CCRB that the stopwatch is green and shaped like a teardrop, about two inches from end to end. PO Lopez instructed § 87(2)(b) to stand up, and he and § 87(2)(b) walked over to Lt. Vasek. The boys explained to Lt. Vasek that they were running for track team. Lt. Vasek said that there had been several robberies in the area, and he misinterpreted what was going on. Lt. Vasek explained that he thought § 87(2)(b) and § 87(2)(b) robbed § 87(2)(b) and § 87(2)(b) was pursuing § 87(2)(b) and § 87(2)(b) with a weapon, either a knife or a gun, in his hand. § 87(2)(b) stated that he did not shake hands with the officers, and said that he did not believe that the officers apologized. § 87(2)(b) and § 87(2)(b) finished their run, which ended by the baseball fields, and then informed their coaches about the incident. § 87(2)(b) stated that there were more than five people flying kites near where he and his teammates were stopped, but he did not notice whether the people flying kites witnessed the incident.

§ 87(2)(b) was interviewed at § 87(2)(b) in Brooklyn, at the house of his track teammate, § 87(2)(b) (Encl. 9.a-e). § 87(2)(b) is a § 87(2)(b)-year-old Hispanic male, and he attends § 87(2)(b). § 87(2)(b) also runs track for § 87(2)(b).

§ 87(2)(b) stated that at approximately 5:00PM on April 23, 2003, he was running the “loop” of Prospect Park with two of his teammates, § 87(2)(b) and § 87(2)(b). § 87(2)(b) said that he was wearing athletic clothes and running shoes, and he was carrying a stopwatch and a do-rag in his hand. At the beginning of the run, § 87(2)(b) noticed a marked police jeep pass. The police jeep was driving in the same direction that the boys were running. The jeep was driving on the asphalt at first, but then it pulled onto the grass path where § 87(2)(b) and § 87(2)(b) were running. § 87(2)(b) and his two teammates moved out of the way for the police jeep, which drove past. § 87(2)(b) stated that when the police jeep passed, § 87(2)(b) was running in front, and he and § 87(2)(b) were running side-by-side behind § 87(2)(b).

§ 87(2)(b) and § 87(2)(b) were two minutes, or 800 meters, away from completing the loop when the marked police jeep drove by again and stopped just past the Eastern Parkway entrance. § 87(2)(b) stated that he, § 87(2)(b) and § 87(2)(b) were running on the grass at that time, and the officers were driving in the opposite direction. § 87(2)(b) was running in front this time, § 87(2)(b) was behind § 87(2)(b) and § 87(2)(b) was running in last place.

The doors of the jeep opened before the vehicle came to a complete stop. Three uniformed officers, Lt. Vasek, PO Baez and PO Lopez exited the jeep. According to § 87(2)(b) Lt. Vasek exited the driver seat, PO Lopez the front passenger seat, and PO Baez the backseat. § 87(2)(b) stopped immediately, even though he was not instructed to. The driver, Lt. Vasek, instructed § 87(2)(b) to show what was in his hands. § 87(2)(b) showed the do-rag and stopwatch. § 87(2)(b) stated that he spoke with Lt. Vasek a few feet away from the police jeep, and the only instruction Lt. Vasek gave him was to put his hands up. § 87(2)(b) clarified that he put his hands in the air, but he did not put his hands on the jeep.

PO Baez and PO Lopez ran towards § 87(2)(b) and § 87(2)(b) and instructed § 87(2)(b) and § 87(2)(b) to stop running and get on the ground. When § 87(2)(b) turned to see his teammates, they were lying face down on the ground with their hands behind their heads. § 87(2)(b) estimated that § 87(2)(b) and § 87(2)(b) were about fifty feet away from him. § 87(2)(b) stated that he paid the most attention to PO Baez, the female officer who was standing by § 87(2)(b). § 87(2)(b) stated that PO Baez had her back towards him, and he could not see if PO Baez’s gun was drawn. § 87(2)(b) was a little further behind § 87(2)(b) and PO Lopez was standing by him. § 87(2)(b) clarified that he did not see any of the officers draw their guns. § 87(2)(b) stated that he heard PO Baez and PO Lopez say to § 87(2)(b) and § 87(2)(b) “Get down fast,” but he did not hear the officers threaten to shoot either of the boys if they did not get down fast enough.

Lt. Vasek asked § 87(2)(b) why he and his friends were running, and § 87(2)(b) explained that they were running for track. The only additional information that Lt. Vasek requested of § 87(2)(b) was his name. Lt. Vasek informed his partners that everything was alright, and everyone convened by the police jeep. Lt. Vasek explained that the first time he and his partners passed, § 87(2)(b) was running in front. But when the officers stopped them, § 87(2)(b) was running behind. Lt. Vasek stated that he thought § 87(2)(b) and § 87(2)(b) robbed § 87(2)(b) and § 87(2)(b) was chasing them to get his property back. PO Lopez stated that he thought § 87(2)(b) was holding a knife while running after § 87(2)(b) and § 87(2)(b). PO Lopez asked § 87(2)(b) to open his hand, and § 87(2)(b) showed the officer that he was holding a stopwatch in his right hand. § 87(2)(b) stated that Lt. Vasek shook his hand and said that it was all a misunderstanding. § 87(2)(b) said that Lt. Vasek did not mention anything about robberies in the area.

§ 87(2)(b) clarified that the incident occurred near the Picnic House, about 800 meters from the baseball fields where the rest of the team was practicing. § 87(2)(b) stated that he saw one person flying a kite, and another person walking a dog, but he did not know if these people witnessed the incident. § 87(2)(b)

stated that other teammates were running the loop, but they did not witness the incident, nor did his teammates who were practicing at the baseball fields.

### **Results of Investigation**

#### *Coach's Statement*

On May 7, 2003, § 87(2)(b) provided CCRB with a written statement from his coach, § 87(2)(b) (Encl. 7). The letter was dated on May 2, 2003. § 87(2)(b) wrote that after § 87(2)(b) and § 87(2)(b) finished their run on April 23, 2003, the boys were visibly upset and they informed him that they were stopped by police, instructed to lie down on the ground, and one of the boys had a gun pointed at him. Further, an officer stated to one of the athletes that if he didn't get down he would be shot. § 87(2)(b) also wrote that the athletes were dressed in exercise attire. § 87(2)(b) vouched for the athletes' character, stating that he has known them for over five years, they are honor students and they participate in community service.

#### *Witness Canvass*

On May 14, 2003, the CCRB made a first attempt to canvass for witnesses at Prospect Park. There was some discrepancy as to whether the incident happened on the wood chip path on or grass, and the CCRB could not narrow down the incident location to less than a quarter mile area. After a failed attempt to meet up with § 87(2)(b) during track practice on June 4, 2003 (practice was canceled due to rain), the assigned investigator met with § 87(2)(b) and § 87(2)(b) on June 18, 2003. § 87(2)(b) and § 87(2)(b) indicated that the location occurred on a grassy area near the Eastern Parkway entrance, well inside of the "loop." There were six civilians in the nearby vicinity, but all stated that they did not witness the incident.

#### *Police Documents*

There is no police documentation of this incident. UF-250 stop and frisk reports were not prepared for this incident, however the stop and frisk log shows that PO Baez filled out a UF-250 at 3:55PM (time obtained from her memo book (Encl. 11.a-b)) for an unrelated incident, about an hour before she interacted with § 87(2)(b) and § 87(2)(b) (Encl. 17).

#### *Subject Officer Statements*

**PO Yvonne Baez** of the 78<sup>th</sup> Precinct provided a statement to CCRB on July 17, 2003 (Encl. 12.a-b). On April 23, 2003, PO Baez was assigned to patrol Prospect Park in Brooklyn with Lt. Vasek and PO Lopez. PO Baez and her partners were dressed in uniform, and they were assigned to a marked Ford Explorer.

PO Baez stated that at approximately 5:00PM, she and her partners were patrolling the lower meadow of Prospect Park. PO Lopez was driving, Lt. Vasek was in the front passenger seat and PO Baez sat in the rear. PO Lopez stopped the vehicle on the inner loop of the lower meadow so that he, PO Baez and Lt. Vasek could observe the area for criminal activity. PO Baez explained that the lower meadow is a known location for bicycle robberies, and although she and her partners were not looking for any particular suspects, they were keeping an eye out for criminal activity. After PO Baez and her partners were stopped for a few minutes, PO Baez observed three young black males running quickly across the lawn. PO Baez suspected that the boys may have been victims of a robbery because they were running at a high rate of speed.

PO Baez and her partners exited their vehicle, and PO Baez approached the male closest to her (Boy 1). During the interview, PO Baez viewed photos of § 87(2)(b) and § 87(2)(b) but she stated that she did not recognize the boys, and she did not know which one she approached. PO Baez stated that Boy 1 stopped as soon as she exited her vehicle, and she clarified that she did not run towards Boy 1. PO Baez asked Boy 1, "Are you okay?" Boy 1 said that he was fine. PO Baez explained to Boy 1 that she thought someone had robbed him, since he was running across the field. Boy 1 explained that he was running for track team. Lt. Vasek and PO Lopez were three or four feet away from PO Baez, on either side of her, and they were each speaking with a different boy (Boy 2 and Boy 3). PO Baez stated that she could not really hear her partners' conversations with Boy 2 and Boy 3.

PO Baez stated that she did not instruct Boy 1 to get on the ground, and she did not hear her partners instruct Boy 2 or Boy 3 to get on the ground. PO Baez stated that Boy 1, 2 and 3 were on their feet for the entire incident. PO Baez stated that she did not draw her gun at any time during this incident. When PO Baez was asked whether any guns were drawn during this incident, she stated, "No, not that I'm aware of." PO Baez stated that she did not tell Boy 1, "Get down before I shoot you," and she did not hear PO Lopez say that to the boy he was speaking with.

PO Baez clarified that she thought that the trio were all robbery victims, and she did not suspect at any time that one of the boys was trying to rob the other two, or that any of the boys were involved in criminal activity. PO Baez stated that once Boy 1 explained that he was running track, she did not doubt him because he and his friends were all wearing exercise attire. PO Baez stated that she did not ask Boy 1 to show her what was in his hands, and she did not hear her partners ask the other boys to show their hands. PO Baez stated that she did not know if there was a discussion about a stopwatch, and she did not notice whether any of the boys were holding stopwatches.

PO Baez stated that she spoke calmly with Boy 1, and she estimated that the interaction lasted for about a minute, after which time Boy 1, Boy 2 and Boy 3 were told that they were free to go. PO Baez stated that UF-250 stop and frisk reports were not prepared because the boys were not asked to provide any identifying information.

**Lt. John Vasek** of the 78<sup>th</sup> Precinct provided a statement to CCRB on August 6, 2003 (Encl. 14.a-c). On April 23, 2003, Lt. Vasek was assigned to the Prospect Park Detail with PO Walter Lopez and PO Yvonne Baez. Lt. Vasek was dressed in uniform.

Lt. Vasek said that April 23, 2003 was a sunny day and the park was "packed." At approximately 5:00PM, Lt. Vasek and his partners were patrolling the long meadow in a marked jeep. PO Lopez was the operator, Lt. Vasek sat next to PO Lopez, and PO Baez sat in the rear. Lt. Vasek said that there is a hill on the long meadow that is a specific conditions area—teenage males take advantage of younger kids and winded runners as they ascend the hill, and assault or rob the younger kids and runners for their walkmen and other equipment. Lt. Vasek observed five to six teenage males on the hill who were wearing sports jerseys, shorts, do-rags, hats and some of them had bikes. Lt. Vasek instructed PO Lopez to park underneath a nearby overpass, so that he could observe the males on the hill.

Lt. Vasek estimated that his vehicle was parked one hundred to two hundred feet from the hill. After a short time, Lt. Vasek saw three boys running down the hill at a high rate of speed. The three boys looked younger than the others on the hill. Lt. Vasek thought that the boys had been robbed by the older boys on the hill. Lt. Vasek clarified that this was the first time he saw the three younger boys, and he denied seeing them while patrolling earlier in the day.

PO Lopez drove the police vehicle about two hundred feet forward and stopped near the three younger boys. Lt. Vasek, PO Baez and PO Lopez exited the vehicle and walked, but did not run, towards the boys. One of the boys, who later informed Lt. Vasek that his name was § 87(2)(b) was running in front of the other two boys. Lt. Vasek asked § 87(2)(b) "Is everything all right? Did the boys on the hill just rob you? Is everything okay?" § 87(2)(b) stated that he was fine, and he said that he was running for a school team.

PO Baez and PO Lopez were on the other side of the vehicle from Lt. Vasek, a distance of approximately twenty-five feet. Lt. Vasek stated that he could not hear PO Baez and PO Lopez's conversation, but they called over § 87(2)(b)'s friends in a similar fashion. Lt. Vasek stated that he did not hear PO Baez or PO Lopez order the boys to get on the ground. Lt. Vasek said that § 87(2) and his friends were on their feet the entire time. Lt. Vasek stated that PO Baez and PO Lopez did not draw their guns at any time during this incident, and he did not see PO Baez and PO Lopez put their hands on their holsters. Lt. Vasek stated that he did not hear PO Baez or PO Lopez threaten to shoot § 87(2)(b)'s friends. Lt. Vasek clarified that PO Baez's back was towards him only briefly when she first exited the police vehicle.

Lt. Vasek stated that he did not fear for his safety or suspect that § 87(2) or his friends were involved in criminal activity. Lt. Vasek denied asking § 87(2) to show him what was in his hands, but he recalled that § 87(2) was holding a stopwatch. However, Lt. Vasek stated that there was no discussion about the stopwatch, it was just something that he observed. Lt. Vasek called § 87(2)(b)'s friends over and explained to all three of them why they were stopped. Lt. Vasek pointed to the older boys on the hill and said that older boys like them sometimes rob younger boys "like you." Lt. Vasek then put out two fists for § 87(2) to "pound" (Lt. Vasek called it a "hot potato"). § 87(2) tapped Lt. Vasek's hands with his own, top and bottom, and § 87(2)(b)'s friends did the same. Then § 87(2) and his friends continued their run.

**PO Walter Lopez** provided a statement to CCRB on October 2, 2003 (Encl. 16.a-c). At the time of the interview, PO Lopez had been reassigned from the 78<sup>th</sup> Precinct to the Brooklyn South Task Force. On April 23, 2003, when PO Lopez was working at the 78<sup>th</sup> Precinct, he was assigned to the Prospect Park Auto with Lt. Vasek and PO Baez.

PO Lopez stated that at approximately 5:00PM, he and his partners were parked on the lower meadow of Prospect Park observing a few teenage males on bicycles who were at the top of a nearby hill. PO Lopez was driving, Lt. Vasek sat in the front passenger seat and PO Baez sat in the rear. PO Lopez stated that the vehicle was parked out in the open, but he did not believe that the males on bicycles noticed the police vehicle. PO Lopez explained that the hill is a robbery conditions area.

Lt. Vasek directed PO Lopez's attention to three younger males who were running up the hill, one in front of the other. The younger males stopped in the vicinity of the teenagers with bicycles and then ran, one in front of the other, down the hill in the direction of PO Lopez's vehicle. PO Lopez drove the police vehicle approximately thirty to forty feet towards the three younger males at about five miles an hour and, from inside of the jeep, Lt. Vasek called over to the three younger males and asked them to stop. Lt. Vasek exited the police vehicle first, and the male running in front came over to Lt. Vasek. PO Lopez stated that the male who interacted with Lt. Vasek seemed startled and nervous.

PO Lopez and PO Baez exited the vehicle after Lt. Vasek. PO Lopez stated that the two other young males ran down the hill and stopped on the passenger side by Lt. Vasek. PO Lopez did not believe that he and PO Baez interacted with any of the young males, and he explained that he and PO Baez were on the opposite side of the jeep from the boys and Lt. Vasek. PO Lopez explained to CCRB that he and his partners thought that the three young boys were victims of a crime. PO Lopez stated that Lt. Vasek asked the boys, "Are you guys alright?" PO Lopez stated that he could not hear Lt. Vasek's conversation with the boys very well, and he did not recall what the boys' explanation was for why they were running. PO Lopez did recall that the boys said that they were running for a track team. PO Lopez recalled that Lt. Vasek asked the boys for their names, verified that they were alright and gave the boys a high five/"hot potato," and the boys ran away. PO Lopez recalled that one of the boys was named § 87(2)(b) and he stated that § 87(2) was the first one who stopped when Lt. Vasek called the boys over.

PO Lopez stated that he did not fear for his safety when the three younger boys ran down the hill, and he did not suspect that the younger boys were involved in criminal activity. PO Lopez stated that he did not hear PO Baez instruct any of the boys to get down on the ground, and he denied doing so himself. PO Lopez stated that he did not hear PO Baez say, "Get down or I'll shoot," and he denied making that statement himself. PO Lopez stated that he did not see PO Baez draw her gun, and he clarified that PO Baez's gun was holstered the entire time. PO Lopez did not recall if he himself had his hand on his gun,

and he did not know whether PO Baez had her hand on her gun. When asked if he heard Lt. Vasek ask the boys to show their hands, PO Lopez stated that he did not recall hearing that. PO Lopez stated that he did not see whether any of the boys were holding stopwatches. PO Lopez stated that the three boys remained on their feet the entire time, and at no time were they on the ground.

PO Lopez further explained why he thought the boys were victims of a crime. PO Lopez stated that the boys were not running on the regular runners' path ("the loop"), and he thought it was strange that they ran up the hill, stopped, and ran down the hill at a high rate of speed. PO Lopez also stated that he did not believe the boys had committed a crime, because if they had, they would not be running toward a marked police vehicle.

#### *Criminal Conviction History*

§ 87(2)(b) and § 87(2)(b) are technically juveniles, and too young to have a public record in the Booking Arraignment Disposition System.

#### *Subject Officer CCRB History*

As of October 30, 2003, PO Yvonne Baez and PO Walter Lopez do not have any previously substantiated allegations against them (Encl. 4.a-b). One allegation of discourtesy was recommended for substantiation against Lt. Vasek in 1988 (CCRB #6288123) (Encl. 4.c). The CCRB was part of NYPD at that time, and currently there is no record of whether or not Lt. Vasek was disciplined.

### **Conclusions and Recommendations**

#### *Officer Identification*

The CCRB contacted the 78<sup>th</sup> Precinct on June 2, 2003 and determined that there is a patrol detail in Prospect Park, and the officers assigned to this detail patrol in a marked jeep. Once the roll call was received at the CCRB (Encl. 19.a-b), Lt. Vasek, PO Baez and PO Lopez were identified by their patrol assignment. The officers confirmed their involvement in the incident. Although the complainants did not know the officers' names, the officers were easily identified and allegations were assigned by the descriptions the boys provided.

#### *Undisputed Facts*

It is undisputed that on April 23, 2003, at approximately 5:00PM § 87(2)(b) and § 87(2)(b) were running in Prospect Park for track practice. It is known that Lt. Vasek, PO Baez and PO Lopez were patrolling the park at that time, and they stopped the trio. It is undisputed that all three officers exited their vehicle and engaged in a brief interaction with the boys, after which the boys were released.

#### *Credibility*

§ 87(2)(g)  
[REDACTED]



§ 87(2)(g)

§ 87(2)(g)

The officer testimony was also generally consistent. PO Baez and Lt. Vasek provided the most consistent statements, as they acknowledged that each officer spoke separately with one of the three boys. PO Lopez's statement was not as strong because he denied speaking with any of the boys. It should be noted that there was a two-month delay in scheduling PO Lopez for an interview because he was out line of duty with a back injury, § 87(2)(g)

§ 87(2)(g)

- A. Abuse of Authority: Lt. John Vasek stopped and questioned § 87(2)(b)
- B. Abuse of Authority: Lt. John Vasek supervised the stop and questioning of § 87(2)(b)
- C. Abuse of Authority: Lt. John Vasek supervised the stop and questioning of § 87(2)(b)

§ 87(2)(g)

§ 87(2)(g) In essence, the police officers portrayed the stop as a simple request for information, which is defined in *New York Search and Seizure* as "the most insignificant and minimal intrusion upon a citizen (p. 110, Encl. 1.a)." Reasonable suspicion is not a prerequisite to a request for information, and the line of questioning is focused and narrow, with the sole purpose being to gather information.

However, the boys characterized the interaction as a forcible stop, which is defined as a temporary physical detention. A forcible stop is lawful when an officer "reasonably suspects that a person is committing, has committed or is about to commit (*New York Search and Seizure*, pp.139)(Encl. 1.b)" a felony or misdemeanor. During the forcible stop the officer may demand of the civilian "his name, address and explanation of conduct." Reasonable suspicion is a prerequisite to the forcible stop, and the forcible stop is more intrusive than a request for information.

§ 87(2)(g) In PO Baez's statement, she said that at the conclusion of the incident the boys were told that they were free to go, implying that they were not free to leave previously. Additionally, it is undisputed that the officers intervened in the boys' path while they were running track in order to question them.

§ 87(2)(g)

§ 87(2)(g) *New York Search and Seizure* lists the following as sources of reasonable suspicion: anonymous sources of information, such as anonymous 911 calls and tips; furtive behavior; information from victims and confidential informants; resemblance to a suspect of a crime; under certain circumstances, flight; and behavior indicative of drug activity (Encl. 1.c-p). Regarding factors that negate reasonable suspicion, *New York Search and Seizure* specifically states, "If innocuous behavior is found to

have occurred in a *high crime area*, that fact alone will *not* provide the officer with a reasonable suspicion that the defendant is committing a crime.”

The officers articulated that the incident location is a robbery-prone conditions area, and they suspected that § 87(2)(b) and his teammates were robbery victims because they were running—according to Lt. Vasek and PO Lopez—away from teenagers on a nearby hill. PO Baez, who was the first officer interviewed, did not mention anything about boys on a hill, and she stated quite simply that she thought the boys had been robbed because they were running. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**D. Force: PO Yvonne Baez pointed her gun at § 87(2)(b)**

§ 87(2)(g) § 87(2)(b) stated that he could not see if PO Baez’s gun was drawn, and did not see any officers draw their guns. § 87(2)(b) also stated that he paid the most attention to PO Baez, although she was fifty feet away and her back was facing him. § 87(2)(g)

§ 87(2)(g)

**E. Abuse of Authority: PO Yvonne Baez threatened § 87(2)(b) with the use of force.**

**F. Abuse of Authority: PO Walter Lopez threatened § 87(2)(b) with the use of force.**

§ 87(2)(g)

**G. § 87(4-b), § 87(2)(g)**

§ 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: